

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In re: : Chapter 11 Case No.

5 LEHMAN BROTHERS HOLDINGS INC., et al., : 08-13555 (SCC)

6 Debtors. : (Jointly

7 - - - - -x Administered)

8 In re: :

9 LEHMAN BROTHERS INC., : Case No.

10 Debtor. : 08-01420 (SCC)

11 - - - - -x (SIPA)

12

13 United States Bankruptcy Court

14 One Bowling Green

15 New York, NY 10004

16

17 August 14, 2018

18 10:04 AM

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21 B E F O R E :

22 HON SHELLEY C. CHAPMAN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: KAREN

1 HEARING re 08-01420-scc Doc # 14646 Twenty-Sixth Application
2 of Hughes Hubbard & Reed LLP for Allowance of Interim
3 Compensation for Services Rendered and Reimbursement of
4 Actual and Necessary Expenses

5
6 HEARING re 08-01420-scc Doc # 14645 Trustees Motion for an
7 Order Authorizing the Abandonment of Certain Discovery
8 Databases

9
10 HEARING re 08-13555-scc Doc # 58381 Motion of Plan
11 Administrator for an Order in Aid of Execution of the
12 Modified Third Amended Joint Chapter 11 Plan of Lehman
13 Brothers Holdings Inc. and Its Affiliated Debtors

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25 Transcribed by: Sonya Ledanski Hyde

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17 ALSO PRESENT TELEPHONICALLY:
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19 PATRICK MOHAN
20 CELINE BUEHL
21 PHILLIP TAYLOR
22 GARRETT FAIL
23 GABRIEL GLAZER
24
25

1 P R O C E E D I N G S

2 THE COURT: Please have a seat. Good Morning,
3 Karen. How's everyone? Should we start with LBI?

4 MS. DIERS: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MS. DIERS: Erin Diers with Hughes Hubbard & Reed
7 for the SIPA Trustee. With me today are Ken Caputo from
8 SIPC, and my colleagues, Jeff Margolin and Elizabeth Beitler
9 with Hughes Hubbard.

10 We have a very short agenda today, just two
11 uncontested matters. Before I address today's motions, I
12 wanted to first just give you an update on where we are from
13 the last time we were before you.

14 THE COURT: Okay.

15 MS. DIERS: The last time we were before you, you
16 approved the accelerated final distribution action.

17 THE COURT: Right.

18 MS. DIERS: And since then, the Trustee's
19 professionals have been reaching out to claimants and
20 responding to questions. And as a result, 521 of the 1,800
21 eligible claimants have elected, and our deadline is this
22 Thursday, and they represent over \$215 million of the
23 aggregate unsecured claim value.

24 The Trustee intends to commence the
25 (indiscernible) distribution, which will be approximately

1 \$170 million in mid-September.

2 THE COURT: Great.

3 MS. DIERS: We also continue to pursue monetizing
4 residual assets. That includes filing claims in class
5 action settlements for financial product manipulation, the
6 LIBOR settlement and the FX settlement.

7 We've submitted four claims to date and are also
8 evaluating additional claims. And there is no update,
9 unfortunately, on the claim litigation that's pending before
10 the district court. There're two separate matters related
11 to these sub-claims.

12 So if it's okay, we will now address the first
13 matter --

14 THE COURT: Sure.

15 MS. DIERS: -- which is Hughes Hubbard's 26th
16 interim fee application --

17 THE COURT: Yes.

18 MS. DIERS: -- for the fourth-month period of
19 January through April 2018. No objections have been filed.
20 SIPC filed its recommendation in support of the application
21 and Mr. Caputo is here in court today.

22 During the application period. Hughes Hubbard
23 expended approximately 3,000 hours, of which approximately
24 153 were incurred by the Trustee. Court total fee request
25 of approximately \$2.2 million. In addition, the firm

1 requests expenses of approximately \$9,500.

2 As you know, the firm provides a 10 percent public
3 interest discount, which is reflected in the application.
4 In addition to that discount, Hughes Hubbard voluntarily
5 adjusted the fees by approximately \$62,000 and made
6 additional reductions after SIPC review and also reduced
7 expenses by over \$10,000.

8 A significant portion of Hughes Hubbard's work
9 during the application period related to the accelerated
10 final distribution and advancing the (indiscernible) interim
11 distribution.

12 So again, Your Honor, SIPC supports the allowance
13 of fees and its recommendation is entitled to reliance under
14 the SIPA statute. So unless the Court has any questions,
15 Hughes Hubbard respectfully requests entry of an order
16 approving the fee application.

17 THE COURT: Thank you very much. Does anyone else
18 wish to be heard?

19 All right. The application is approved. Thank
20 you. Thank you --

21 MS. DIERS: Thank you.

22 THE COURT: -- for continuing work to bring this
23 part of the proceeding to a conclusion. The agendas are
24 getting thinner and thinner, which is a -- which is a good
25 thing.

1 And the only other thing on the agenda this
2 morning is the Trustee's motion regarding the abandonment of
3 certain databases, continuing that effort on the part of the
4 Trustee.

5 MS. DIERS: Yes. My colleague, Ms. Beitler, will
6 address that motion.

7 THE COURT: Very good. Okay, thank you.

8 MS. BEITLER: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MS. BEITLER: Elizabeth Beitler, Hughes Hubbard
11 for the Trustee, Mr. Gibbon.

12 As Ms. Diers said, I'll be addressing the
13 Trustee's motion for an order authorizing the abandonment of
14 certain discovery databases.

15 This motion is the sixth such motion filed -- to
16 be filed with the court. Your Honor has previously approved
17 the five prior motions seeking similar relief, and those
18 orders have all been effectuated.

19 The current motion seeks this court's authority to
20 abandon and destroy discovery databases maintained in
21 connection with the LBIE and ACATS litigations.

22 Your Honor's order disallowing and expunging the
23 ACATS claim has now become final, and a portion of the LBIE
24 discovery database retained by the Trustee at the request of
25 Barclays is no longer needed given that the Barclay -- that

1 LBIE have now settled all matters.

2 The abandonment of these databases which comprise
3 of over 754,000 documents and total over 1.47 terabytes of
4 data will result in savings to the LBIE estate of
5 approximately \$180,000 per year.

6 As with the prior motions, the Trustee filed this
7 motions -- this motion in furtherance of transparency to
8 allow potentially interested parties an opportunity to
9 contact the Trustee.

10 The Trustee has served notice of this motion on
11 all parties on all parties who have previously requested
12 documentation from the Trustee since the commencement of the
13 liquidation as well as numerous governmental regulators.
14 Trustee's counsel received a number of informal inquiries
15 regarding the motion that have all been resolved. No
16 responses to the motion were filed.

17 Trustee's professionals have confirmed that the
18 data at issue is not needed in order to effectuate the
19 Trustee's remaining tasks in winding down the LBIE estate.

20 In addition, SIPC, represented in the courtroom
21 today by Mr. Caputo, supports this motion.

22 Unless the Court has any further questions, the
23 Trustee respectfully requests entry of this order as yet
24 another step towards winding down the LBIE estate.

25 THE COURT: Very good. Thank you. does anyone

1 else wish to be heard with respect to the Trustee's motion
2 to abandon these databases?

3 Okay. Very good. I grant the motion. We'll
4 enter the order later today. Thank you very much.

5 MS. BEITLER: Thank you.

6 THE COURT: So the next time we'll see you will be
7 on September 17th.

8 MR. CAPUTO: Looking forward to it, Your Honor.

9 THE COURT: Will Mr. Gibbons be with us?

10 MR. CAPUTO: He will.

11 THE COURT: Excellent. It's a very much
12 anticipated anniversary for all concerned.

13 MR. CAPUTO: Indeed.

14 THE COURT: Appreciate the effort that I know that
15 the LBIE estate is putting into its presentation. I'll look
16 forward to hearing it at that time.

17 But in the meantime, if you wish to be excused,
18 that's fine. And enjoy the rest of your summer.

19 MR. CAPUTO: Thank you, Your Honor.

20 THE COURT: Thank you very much.

21 MR. MARGOLIN: We'll email orders to change --

22 THE COURT: Yes, please. Thank you.

23 MR. MARGOLIN: Okay.

24 THE COURT: Okay. We'll move on to the LBHI
25 agenda.

1 MR. FAIL: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MR. FAIL: Garrett Fail, Weil, Gotshal & Manges on
4 behalf of the Plan Administrator of the Lehman Brothers
5 Holdings Inc. estates.

6 The next item on the agenda is the plan
7 administrator's motion for an order in aid of execution of
8 the plan. It's at Docket Number 58381. We're confident
9 that the Court has reviewed the pleadings. We know that the
10 Court is familiar with Section 8.13 of the plan as the Court
11 has ruled a number of times in a number of different
12 contexts based on the plain meaning of this section of the
13 plan.

14 The parties agree that prior to LBIE's latest
15 distribution, distributions or other consideration of
16 approximately 13 cents had to be provided on either the
17 guarantee or the primary claims at issue for the guarantee
18 claims to be deemed satisfied under the plan. There are no
19 relevant facts in dispute.

20 The question before the Court is one of plan
21 interpretation. As set forth in the motion, LBIE's latest
22 distribution of more than 13 cents clearly falls within the
23 plain meaning of "other consideration provided on the
24 corresponding primary claim" in Section 8.13(a) of the plan.
25 Neither the word "consideration" nor the word "on" is

1 limiting.

2 There's nothing in the plan that requires that
3 consideration provided on the corresponding primary claim be
4 limited to consideration in satisfaction of the principal
5 amount of the primary claim or consideration provided to
6 reduce the principal amount of the primary claim.

7 The plan administrator's reply brief addressed
8 each of the attempts by Deutsche Bank and Attestor to twist
9 plain meaning and to create inconsistencies where none
10 exist.

11 Rather than repeat our papers or complicate a
12 simple reading, I'm happy to answer any questions that the
13 Court has at this time and otherwise reserve time to respond
14 to any arguments made this morning.

15 THE COURT: All right. That's fine. Thank you
16 very much, Mr. Fail.

17 MR. FAIL: Thank you, Your Honor.

18 MR. ROVIRA: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MR. ROVIRA: Alex Rovira from Sidley Austin on
21 behalf of Attestor Capital and certain of its managed funds.

22 Your Honor, the dispute before the Court is on
23 interpretation of Section 8.13(a) of the Debtor's plan, and
24 specifically whether payments received on account of
25 statutory interest under the English insolvency rules are

1 within the party's intended meaning of 8.13(a) that is
2 "consideration provided on corresponding primary claim."

3 Your Honor, we did put together a demonstrative
4 that would -- I think would help aid the Court to set the
5 issue and to help us propose our position to you. We have
6 copies to the -- for the plan administrator's counsel.

7 THE COURT: Okay.

8 MR. ROVIRA: May I approach, Your Honor?

9 THE COURT: Sure. Thank you.

10 Here's the thing, okay? I'm interpreting the
11 words in the plan. How could anything like this possibly
12 matter?

13 MR. ROVIRA: Your Honor, it matters because you
14 can't look at the plan in isolation. We're talking about
15 specific consideration, and that is statutory interest
16 payments. That was something that was provided --

17 THE COURT: But this demonstrative purports to
18 demonstrate to me why you should get more money by virtue of
19 the LBHI guarantee. Whether or not that's the case has
20 nothing to do with the way these numbers happen to run. I
21 just --

22 MR. ROVIRA: Understood, Your Honor. We can move
23 on from the demonstrative. We don't need to address it.

24 THE COURT: No, that -- I mean, the demonstrative
25 -- this is reflected in your -- in your papers.

1 MR. ROVIRA: Correct, Your Honor.

2 THE COURT: This is just a -- with color and
3 pictures on it. I mean, you've taken me through the math in
4 the papers, but -- well --

5 MR. ROVIRA: Let me just go to our argument then.
6 And before we -- before turning to 8.13(a), I want to
7 address the nature and the basis of the statutory interest
8 payments, and that requires us to look at English law.

9 And I'm not going to spend a lot of time on
10 English law because this is an interpretation of a Chapter
11 11 plan, but it is relevant to understand whether these
12 statutory interest payments satisfy the terms of the plan by
13 determining the nature of that plan. And the English court
14 has --

15 THE COURT: That -- that statement that you just
16 made, I -- I'm not following. Whether the statutory
17 interest payments satisfy the terms of the plan. The
18 question is whether or not this is other consideration
19 provided on the primary claim. That's it. That's the whole
20 question.

21 MR. ROVIRA: Correct.

22 THE COURT: Right?

23 MR. ROVIRA: Yep.

24 THE COURT: So it's not -- it either it -- either
25 it is or it isn't, right?

1 MR. ROVIRA: Correct. But we have to understand
2 what it is, and that's -- that's what we need to -- in order
3 to know whether something fits, we have to understand the
4 nature of it, and is it something that is a primary claim,
5 is it consideration? And -- but we have to see what is
6 that? Is it a payment towards any claim, or is it a payment
7 towards a primary claim? Let's -- let's see what that --
8 the nature of that statutory insert is to see.

9 THE COURT: But, it -- if -- go ahead.

10 MR. ROVIRA: I just don't think we can take these
11 payments out of context. It needs to determine what is this
12 payment, and that's a statutory interest that was -- arose
13 post-petition by English statute. It was not under the
14 underlying contract that formed the basis of the primary
15 claim on the guarantee. If --

16 THE COURT: Let me ask you this. You didn't
17 receive -- the consideration was not received because your,
18 you know, your client's name was drawn out of a hat. The
19 consideration was received because your client has a primary
20 claim under the plan. It --

21 MR. ROVIRA: That --

22 THE COURT: It didn't win the lottery, right? It
23 didn't get the -- this consideration because it won the
24 lottery, right?

25 MR. ROVIRA: It's in spite of having a -- an

1 admitted claim.

2 THE COURT: In spite of?

3 MR. ROVIRA: Yeah. It's --

4 THE COURT: If you didn't have the claim, would
5 you have gotten the consideration?

6 MR. ROVIRA: No. You're right. We do need to
7 have the claim. But it has -- it's statutory. It's not
8 because of the claim itself. It's not -- it's compensatory
9 for the delay of receiving the payment in full of that
10 primary claim. So it's not -- it's correct that it was
11 determined by reference to the admitted claim, but it's a
12 completely independent and separate right in the --

13 THE COURT: So let me ask you this question.
14 They're -- the -- you and Deutsche Bank are the only two
15 claimants who are taking this position. Why do you think
16 that is? Better lawyers? Everybody else just didn't think
17 of this argument?

18 MR. ROVIRA: No, Your Honor.

19 THE COURT: It's a -- it's a serious question.
20 I'm asking it as a serious question. I've been presiding
21 over this case a long time. As Mr. Fail suggested, there
22 have been multiple attempts to garner additional
23 consideration based on provisions of the plan and the
24 mechanics of how, for example, currency conversions work.
25 And they -- and they both failed.

1 Here, in response to the estates' previous motions
2 with respect to the guarantee claims, everyone else went
3 away except the two of you. Why do you think that is? Did
4 they just miss the issue? They left all that money on the
5 table?

6 MR. ROVIRA: No, Your Honor. Some of them
7 settled. And we looked at some of the claims, and some of
8 the claims seem to have been allowed. I'm not certain why
9 or in terms of what the terms of those settlements were, but
10 it's not that. And the plan administrators use the word
11 "virtually all," not everyone. So some of them did settle.
12 Some of them, you know -- I were -- you know, we would think
13 that just --

14 THE COURT: Well, remember, those were at an
15 earlier point in time when the certainty of the payment in
16 full as a result of the LBIE Distributions didn't exist as
17 it does now.

18 MR. ROVIRA: Correct, Your Honor, but it -- it's a
19 simple business judgment that those parties made, whether it
20 was a cost-efficient basis to pursue their claims. But --
21 the -- because of those -- the actions of those other
22 parties, that is not the conduct of the party before you
23 today.

24 And the case law and the conduct of the parties
25 has been consistent, and we have opposed that. And we don't

1 know why they withdrew, but I don't think that they withdrew
2 because they adopted the plan administrator's
3 interpretation. They made their own decision based on the
4 specific facts and circumstances of each of those claims
5 with different values, different -- different specific
6 circumstances.

7 So I don't think that you can look at the conduct
8 of parties that some settled, some, you know, were foreign
9 creditors and may not have wanted a -- to cause that expense
10 and burden of litigating that claim.

11 So, Your Honor, I don't think the conduct of the
12 party's caselaw really is reflective of the parties
13 admitting or giving up and saying we withdrew because we
14 adopted the plan administrator's plan. I just don't think
15 that's the -- a proper analysis of the conduct of the
16 parties, and the conduct of the parties here have been
17 consistent to oppose that plan administrator's
18 determination.

19 So, Your Honor, I want to just make another
20 reference to English law, and that is the High Court's
21 decision on what the statutory interest payments were. And
22 it made two relevant decisions. One was that it found that
23 the creditors did not have one composite claim principal as
24 primary claim and interest -- not one composite. It was two
25 specific and distinct claims, one for principal of the

1 primary claim, and one separate and distinct post-petition
2 statutory claim.

3 And the second holding was that -- that statutory
4 interest cannot discharge principal. And we think that's
5 relevant --

6 THE COURT: That has nothing to do with what the
7 words of the plan say. The plan does not talk about
8 receiving consideration in satisfaction of a primary claim.

9 MR. ROVIRA: I think it is relevant because the
10 High Court says this isn't with respect to a primary claim.
11 It's -- well, it doesn't say it's not with respect to.

12 THE COURT: Satisfaction.

13 MR. ROVIRA: It doesn't satisfy. It doesn't
14 discharge.

15 THE COURT: The plan language does not say -- does
16 not contain language that speaks to the discharge or
17 satisfaction of a primary claim.

18 MR. ROVIRA: And we're not asking that it needs to
19 add that language. The context of 8.13(a) provides meaning
20 to the words "provided on." The purpose of 8.13(a) is to
21 determine whether the allowed guarantee claim has been
22 satisfied in full.

23 So in that context, we need to determine whether
24 this consideration, this payment, this statutory interest,
25 was it provided on the corresponding claim such on promise -

1 - corresponding primary claim such that it would limit or
2 satisfy, reduce, the guarantee obligation.

3 THE COURT: Right?

4 MR. ROVIRA: Right. And when the High Court says
5 this payment isn't with regards to the primary claim.
6 Primary claim has already been satisfied in full. This is
7 with regards to compensation for a delay in having your
8 admitted claim satisfied in full.

9 That, you know, in the context of 8.13(a), we
10 think it's a reasonable interpretation that "provided on"
11 means "in satisfaction of," but we don't -- we don't have to
12 add those language -- that language in. You have to look at
13 the whole phrase, you know? If we look at a dictionary,
14 "on" has numerous reading -- numerous meanings.

15 THE COURT: Well, this is one of the more
16 noteworthy parts of your brief. I find this -- well, it's
17 paragraph 41 where you say that the term "on," in the phrase
18 "consideration provided on the corresponding primary claim,"
19 is used to describe the relationship between a payment and
20 an obligation.

21 This is the part that I find very interesting:
22 "As used in plan Section 8.13(a), the term 'on' is clearly
23 narrower than 'in connection with' or 'relating to' or 'with
24 respect to.' These terms collectively are used 119 times in
25 the plan as a whole, including once within Section 8.13(a),

1 and surely would have been used here if a broad relationship
2 between payments from LBIE and the primary claims had been
3 intended. Thus, it is clear that 'provided on the primary
4 claims' means something narrower than the mere fact that the
5 statutory interest payments 'correspond to' the primary
6 claims."

7 And then you go on in paragraph 42 to say: "The
8 plain meaning of 'on' in the sense of the payment on a claim
9 is in satisfaction of, payments in whatever form made on a
10 claim reduce the amount of that claim. That is the natural
11 intuitive meaning of a payment being provided on a claim."

12 So I think Mr. -- in Mr. Fail's charitable
13 characterization of this as ipse dixit -- this is completely
14 made up. This is a completely made-up argument. You're
15 taking a simple word, "on," and building a whole
16 architecture around it. That's made up.

17 MR. ROVIRA: I disagree, Your Honor.

18 THE COURT: It's -- it -- you could apply a "but
19 for" test, but for the claim you wouldn't have gotten the
20 consideration. That's payment on.

21 MR. ROVIRA: That's not payment on. The -- we're
22 -- you can't look at "on" in isolation. It has to be
23 consideration. And consideration is a bargain for exchange.
24 It's something that's given in exchange for something, and
25 this statutory interest payment was not bargained for. It's

1 not a consideration as --

2 THE COURT: But that's also -- that's another ipse
3 dixit or made-up argument that -- that construction of the
4 word "consideration" in the context of plan consideration.
5 In the context of a plan, consideration -- I went to law
6 school too. I know what consideration is in the contract
7 context. But in the plan context, consideration is what you
8 get on account of your claim -- on your claim, in payment of
9 your claim, for your claim, because you have a claim. All
10 those things are the same. They're all the same thing.

11 MR. ROVIRA: I beg to differ only because this is
12 not in payment of our claim. It's compensation for the
13 delay in receiving payment of our claim. Those are two
14 separate things. Interest is different than your claim.

15 THE COURT: What's the purpose of a guarantee?

16 MR. ROVIRA: Interest is different than your debt.

17 THE COURT: What's the purpose of a guarantee?

18 MR. ROVIRA: To make sure that you receive payment
19 on the primary claim.

20 THE COURT: To make sure that you're whole, right?
21 To make sure that you're not left with anything still owing
22 on account of your claim, right?

23 MR. ROVIRA: Correct.

24 THE COURT: Right. Your client is whole.

25 MR. ROVIRA: Our client is not whole, Your Honor.

1 Our client is whole with respect to the compensation for the
2 delay in receiving this payment, that statutory interest
3 that is a post-petition right. It's a post-petition right
4 that is granted on the statute that administrator is
5 required to give, so it's compensatory.

6 If that is to be used to make ourselves whole on
7 the guarantee claim, then we're -- we're suffering a loss
8 from not receiving that statutory interest payment that was
9 required under English statute to provide us with
10 compensation for that delay that all other LBIE creditors
11 are receiving in whole.

12 So we're not -- we're not getting in addition to.
13 This has been ten years of not receiving that payment, so
14 this statutory interest is a completely different and for a
15 different purpose. It has nothing to do with the primary
16 claim other than that it's calculated on the basis of that
17 claim. But it's not in satisfaction of that claim.

18 And that's what Section 8.13(a) -- and Section
19 8.13(a) is determined to look at whether --

20 THE COURT: 8.13(a) says nothing about in
21 satisfaction of -- in discharge of.

22 MR. ROVIRA: It's to determine whether the
23 guarantee claim, the allowed guarantee claim, has been
24 satisfied before. That's what it refers. And it looks at
25 capital D Distributions, and it looks at other

1 considerations provided on the primary claim.

2 And our position is that this is not provided on
3 the primary claim. The primary claim by defined under the
4 plan under Section 1.4 provides that the primary claim has
5 to be a claim which has a corresponding guarantee claim.
6 The statutory interest payment was a separate claim. It
7 didn't have a guarantee related to it so it can't be in
8 respect of a primary claim. That statutory interest payment
9 was not guaranteed. It couldn't have been guaranteed.

10 So, Your Honor, we -- we don't think that that
11 statutory interest payment could be consideration. It
12 couldn't be in satisfaction, which is the purpose of 8.13,
13 and it can't be on a primary claim as defined by the plan.
14 And as the English courts have said, it cannot be used to
15 discharge a principal debt.

16 It's almost like any kind of interest. If I owed
17 you \$100, and I kept on paying you interest over 10 years
18 and I defaulted, I would still owe you the \$100 even if I
19 paid you \$1,000 of interest. That -- the nature of that
20 interest payment is not to satisfy that primary debt.

21 So, Your Honor, I think it's within the
22 expectations of the parties that a narrower interpretation
23 of what "provided on," what "consideration" on the primary
24 claim would mean. And we don't think that's ambiguous.

25 In order for the plan administrator's definition

1 to make sense, you have to look at it in isolation, and you
2 have to think of "provided on" as "calculated based on,"
3 "accrued on," "relating to." Those terms are not used in
4 that -- in that section, in Section 8.13(a).

5 And, Your Honor, we don't think that language is
6 ambiguous, but New York Court says that if it is ambiguous,
7 then you look at the narrower interpretation. You look at
8 the interpretation within that phrase.

9 There's a case, and I can give you the cite for
10 it, Roswell Capital Partners where he used the term
11 "violation" on its own in isolation was very broad. And the
12 term "law" in isolation was very broad, but there was a
13 narrower construction that the courts said we must give to
14 the phrase "violation of law," and that, Your Honor, is what
15 we think is a reasonable expectation of the parties looking
16 at the complete term, "consideration," "provided on," "the
17 corresponding primary claim." And whether that is in
18 satisfaction of a guarantee claim.

19 And our position is that statutory interest which
20 is a post-petition right, it's a separate right, cannot be
21 in -- it cannot be as consideration because there was
22 nothing to bargain for, and it cannot discharge, or reduce,
23 or limit the guarantee claim because it wasn't paid on it,
24 Your Honor.

25 Your Honor, the -- another argument I wanted to

1 address was the plan administrator's suggestion that
2 consideration would include interest. They make that
3 argument in their motion on Paragraphs 33 and 35. And they
4 say that consideration, as used in section 8.13(a), must
5 include interest because of the preceding phrase to it,
6 "combined with Distributions." Capital D, Distributions,
7 requires a broad interpretation of distributions.

8 But again, I think the context and the words used
9 matter. And they don't provide any evidence other than that
10 distributions as used in 8.13(c) would include interest, but
11 --

12 THE COURT: But what about that the argument that
13 you go down that path right?

14 You have to read 8.13(a), to count -- post-
15 petition interest distributed by one affiliate of LBHI but
16 not post-petition interest distributed by another primary
17 obligor. It's all got to be consistent.

18 MR. ROVIRA: And it is consistent, Your Honor.
19 The language is consistent because distributions on the
20 subsidiary Debtor, it cannot be within -- with post-petition
21 interest because 8.13(c) tells you you cannot distribute --

22 THE COURT: So your point is that -- you agree
23 that the word "consideration" is used to encompass whatever
24 types of property or value -- cash, securities, other --
25 might be distributed in foreign proceedings. Right? You

1 agree with that. That's from your papers, right?

2 MR. ROVIRA: We -- in isolation, yes. It can be
3 very broad.

4 THE COURT: What do you mean?

5 MR. ROVIRA: What I mean is that it has to be
6 consideration for something. It could -- it could be all
7 types of value of property --

8 THE COURT: Okay, but you say that that
9 consideration is used -- so it's to encompass whatever types
10 of property or value might be distributed in foreign
11 proceedings, but it's limited to amounts used to discharge
12 principal and excludes post-petition statutory --

13 MR. ROVIRA: On the primary claim. Just focus on
14 the language, right? It's just a primary claim. And the
15 primary claim could include contractual interests.

16 THE COURT: But the primary claim is a term that's
17 used to distinguish it from the guarantee claim.

18 MR. ROVIRA: Correct. Correct. And the guarantee
19 claim and the primary claim does not include statutory
20 interest. It includes contractual interest. If there was
21 an interest paid or an interest owing pre-petition, that
22 interest is included, and then that becomes the principal.
23 That's what I'm considering the principal of the primary
24 claim.

25 It doesn't include interest post-petition. And so

1 a payment that is with respect to being paid to satisfy a
2 post-petition statutory obligation of the LBIE
3 administrators cannot be viewed in isolation. Yes, it's
4 value, but no it's not in payment of a primary claim. It's
5 in payment of a separate and distinct claim.

6 I think that's my argument, Your Honor.

7 THE COURT: Okay.

8 MR. ROVIRA: Do you have any other questions?

9 THE COURT: Thank you very much.

10 MR. ROVIRA: Thank you.

11 MR. FAIL: Your Honor --

12 THE COURT: Mr. Fail?

13 MR. FAIL: I think -- I think Your Honor
14 understands the plan administrator's arguments and the
15 difference between being a primary claim and consideration
16 being provided on the claim, and we set forth our arguments
17 as to why the Court should not give weight or an argument
18 cannot be constructed on the High Court's discussion of
19 claims that were subsequently determined not to exist
20 between, you know, currency claim versus interest and the
21 intermediate appellate court's dicta that, you know, it
22 would've been overruled. So I'm going to rest --

23 THE COURT: Do you have --

24 MR. FAIL: -- but I'll -- but I'm happy to answer
25 questions.

1 THE COURT: Well, let me ask you what -- do you
2 have anything that you want to say in response to the notion
3 that -- I'm paraphrasing -- that the statutory interest
4 "consideration," I put in quotes, has nothing to do with the
5 claim because it's compensation for delay or -- I'm
6 paraphrasing.

7 MR. FAIL: Understood, Your Honor. We responded
8 to that in the papers as well. This line of argument comes
9 from an attempt to distinguish or to argue that the post-
10 petition interest had to be a primary claim instead of being
11 consideration on a claim.

12 If you look at our plans', LBHI's plans',
13 provision for post-petition interest, it is -- it is
14 interest on a claim as well and not part of the primary
15 claim. Your Honor made that determination, I believe,
16 earlier in the cases when parties tried to get compound
17 interest --

18 THE COURT: Right.

19 MR. FAIL: -- and there was a difference between
20 interest being part of a claim versus being on the claim.
21 So we've seen the 8.13 arguments before, and only if you
22 believe -- which it -- which you should not -- that a
23 payment has to reduce a primary claim, which the plan
24 doesn't provide, or satisfy would the subsequent argument be
25 relevant that, you know, interest had to be the primary

1 claim. It doesn't. This is consideration provided by LBIE
2 on -- on account of, because of, but for -- the primary
3 claim. It wasn't gratuitous. The distinction --

4 THE COURT: Well, I think that's the key point,
5 that it -- that it -- that it wasn't gratuitous. It wasn't
6 --

7 MR. FAIL: Parties in -- parties that were
8 creditors of LBIE received a bundle of rights in the U.K.
9 administration just like here in the U.S. under the U.S.
10 Bankruptcy Code, parties are entitled to receive a
11 distribution up to the amount of their claim in
12 satisfaction, here 100 cents on the dollar, there 100 p on
13 the pound. And then afterwards, they're entitled to post-
14 petition interest, just like our plan provides pursuant to
15 8.13, interest as a distribution that comes after on a
16 claim.

17 They are pursuant to LBIE's scheme, and in
18 accordance with the insolvency rules, interest is paid on a
19 primary claim under their rules. The word "on" is in the
20 rules. And to do anything else, Your Honor, at this stage,
21 would be inconsistent with the interpretation and the
22 reading.

23 There was an allusion, I think, that the word
24 "virtually" had a meaning that should change Your Honor's
25 mind. To be clear, my intention for writing the word

1 "virtually" was because there were three parties that when
2 I-- when we drafted the papers, we were confirming their
3 interpretation pursuant to an agreement that they have been
4 satisfied. They received the subsequent LBIE distribution,
5 three significant counterparties, large intuitions with a
6 number of claims have confirmed, and those claims have been
7 deemed satisfied.

8 The "virtually" also referred to the fact that
9 there's at least one party with whom the Court's familiar,
10 Maverick, which made a representation that they won't be
11 receiving interest. So that party, you know, we've already
12 won and the claim has been dismissed, but it's on appeal.
13 They've made representations they won't be receiving
14 interest. We don't think they have a claim, but if they
15 have a claim, we can revisit the whole scenario.

16 That is not -- that is not here. SRM is under --
17 is under the Court's consideration.

18 THE COURT: Subject -- right.

19 MR. FAIL: They've made a lot of arguments over
20 time, Your Honor. I don't know which ones they're going to
21 pursue. We don't think they have a claim, but if they have
22 a claim, we don't know, you know, exactly what they've
23 received. So as an abundance of caution, I said
24 "virtually."

25 I'm not aware on behalf of the estate of any LBI-

1 based primary guarantee claims where LBIE was a primary
2 obligor where the party was an affiliate that is receiving
3 distributions, but I would say this, Your Honor. To the
4 extent that LBHI has made a distribution on guarantee
5 claims, LB -- and the primary obligor has satisfied in part
6 or in full the total consideration -- LBHI has pursued and
7 LBHI will pursue rights of subrogation, right, to enforce
8 the plan provisions which say that no party should be
9 unjustly enriched to collect back that money. It has done
10 it in the past. It has collected, and it will pursue to
11 enforce the single recovery rule.

12 There's no question that under our plan as a
13 result of converting claims -- allowed claims -- as of a
14 petition date and are compromised in agreement to uniformly
15 count distributions made over the past eight and a half
16 years or ten years of the case virtually in jurisdictions
17 around the world, to convert those distributions or
18 consideration.

19 As of the confirmation date, 13 cents was owed.
20 That is protected. It was saying, you know, they can't get
21 it. There's no question. That's a total red herring. They
22 were entitled to receive 13 more cents. The only question
23 is who had to pay it? They are saying we do in addition to
24 everything that LBIE says, and we're just simply saying the
25 amount that LBIE paid should satisfy it. It's the basis on

1 which the Court estimated all other claims.

2 This isn't a new argument. This argument was the
3 reason everyone knew when we filed the estimation motions
4 that LBIE was going to pay 100 pence on the pound, and all
5 that would come left was interest. There were questions of
6 when it would pay, who's going to be paid first on sub-debt
7 or interest. So would it come, how much would it be, would
8 it be enough to meet 13 cents?

9 There were questions that parties in Europe made
10 that maybe all of the 100 p on the pound that we were saying
11 was principal should be interest first. Shows how fluid
12 cash and consideration could be. People made that argument
13 so that they could continue to accrue interest.

14 THE COURT: Right. I've read that.

15 MR. FAIL: Right? To make more money. But
16 there's no doubt that LBIE paid 100 p on the pound. There's
17 now no question that it was principal. There's now no
18 question this is interest. The only question is, is it
19 consideration on the claim? We don't see any other reading
20 that isn't torture, that doesn't ignore the definition or
21 say, you know, consider -- distribution does include
22 interest in most of the plan but not when I want to read it
23 here.

24 And as we've said, we've found examples where
25 guarantee claims are allowed in amounts higher than primary

1 -- primary claims where the primary obligor was a Debtor.

2 So we don't think that there was any merit to the argument,
3 and again, I'm happy to answer any further questions.

4 THE COURT: All right. All right. Thank you.

5 Well, at least I hope it was clear that I spent a lot of
6 time reading and rereading and parsing the language and
7 attempting to give the objectors every benefit of the doubt,
8 but I kept coming back to where I started, which is I agree
9 with the plan administrator's characterization that in large
10 measure, the arguments that were raised were red herrings.

11 It -- the objectors took something that I believe
12 is very simple and straightforward and creatively attempted
13 to take the Court on a frolicking detour through the plan,
14 reading meanings into words that clearly is not there,
15 reading a purpose into plan provisions that I think there's
16 no evidence was there.

17 The fact of the matter is, as far as my reading of
18 the plan is concerned, the subsequent LBIE distribution is
19 "other consideration provided on the corresponding primary
20 claim within the meaning of 8.13(a) of the plan." That's it.
21 It's no more complicated than that, and I don't believe that
22 it's necessary to debunk or address in detail any of the
23 additional arguments.

24 I will say, though, that this interpretation of
25 the plan is consistent with the single satisfaction rule.

1 That's the way the guarantee works. That's the way it
2 should work -- it should work here. And I think to allow --
3 to require that additional monies be paid by LBHI on the
4 guarantee would violate that very, very fundamental
5 principle.

6 So based on the entirety of the record, my
7 observations today, which can be incorporated by reference
8 into the order, I intend to grant the plan administrator's
9 motion and overrule the objections.

10 All right. Thank you.

11 MR. ROVIRA: Thank you, Your Honor.

12 MR. FAIL: Thank you, Your Honor.

13 (Whereupon these proceedings were concluded at
14 10:45 AM)

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I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya Ledanski
Hyde

Digitally signed by Sonya Ledanski Hyde
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